

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM C. STILLWAGON,)	
)	
Plaintiff,)	Civil Action No. 2:11-cv-1338
)	
v.)	
)	Judge Mark R. Hornak
INNSBROOK GOLF & MARINA,)	
LLC, et al.,)	
)	
Defendants.)	

MEMORANDUM

Mark R. Hornak, United States District Judge

In its March 20, 2013 Order, as to Defendants Rial Corporation and Innsbrook Golf & Marina, LLC's counterclaim for breach of fiduciary duty as an attorney (Count I), the Court dismissed that count without prejudice due to what the Court believed to be a failure to file a Certificate of Merit. ECF No. 71. It has come to the Court's attention that Defendants had filed a Certificate of Merit on July 16, 2012. ECF No. 58. Thus, the failure to file a Certificate of Merit is not an appropriate basis for granting the motion.

Because the Court cannot say that the counterclaim is facially deficient and should otherwise be dismissed, in light of the transfer of this action and the anticipated consideration by that Court of the remaining claims and counterclaims, we will stay our hand as to this claim in Count I of the counterclaim. For all of the other reasons that the case is being transferred, this counterclaim is better left for examination on the merits by the transferee Court. Therefore, the Court will file an amended order.

/s Mark R. Hornak
Mark R. Hornak
United States District Judge

Dated: March 22, 2013
cc: All counsel of record